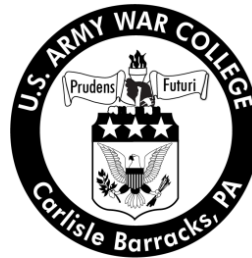


Strategy Research Project International Fellow

Conflict Prevention and Confidence Building Measures in the South China Sea

by

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United States Army War College
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This paper discusses the root causes of the South China Sea disputes, especially from the geopolitical perspective, resource concern, historical background and current threat. It provides a practical analysis of how to apply conflict prevention and confidence building measures to lessen the tension between China and ASEAN-related or other claimants. Most importantly, it also proposes recommendations for better bilateral, multilateral, regional and international mechanisms to reduce potential conflict and manage stability in this region.

Conflict Prevention and Confidence Building Measures in the South China Sea

For the past two decades, the South China Sea was not a flashpoint like the ones at the Korean Peninsula or the Taiwan Strait; it was a peaceful and quiet region in Asia. Some scholars argue that the South China Sea disputes have transformed from an unstable- to stable-peace status already.¹ They have this belief based on the facts of the unequal power between the People's Republic of China (the PRC, or more simply as China) and other claimants, the institutionalized relations between China and the Association of Southeast Asian Nations (ASEAN) with certain conflict prevention measures, and a strong regional integration process linking both China and ASEAN in a more economically interdependent way. In fact, it is like a peace before a thunder storm. The current Asian Pacific situation is changing swiftly beyond most people's estimation. Even though China claims its peaceful rise will enhance global stability, its rapid military and economic development combined with its forceful attitude and actions have gradually threatened not only the South China Sea claimants but also neighboring countries that still have territorial sovereignty issues with it, such as Japan, Taiwan (the Republic of China) and India. All these nations are facing more unilateral proclamations or actions from Beijing about its sovereignty and territorial integrity.²

If we take a glance of the recent Senkaku (Diaoyu) islands disputes in the East China Sea, they are also related to territorial sovereignty issues in the South China Sea. The relations among China, Japan and Taiwan are getting intense since the Japanese government formally announced the purchase of these islands from a private owner on 10 September 2012. Such action just gives China an excuse to flex its muscles and take more military-related initiatives to retaliate against the Japanese unilateral change of agreed status quo many years ago. People can observe that Chinese harassments

towards Japan are getting more frequently in the Western Pacific. As for the South China Sea disputes, besides the territorial sovereignty issues, there is a natural resource exploitation issue related to the commercial fishing, crude oil and natural gas under the waters of the region. Additionally, this area is a pivotal and strategic location connecting the sea lanes from the Pacific to the Indian Ocean, and is also a vital energy supply route to the Middle East. For the above reasons, the safety of navigation and communication in the South China Sea is always a major concern, not only for regional countries but also the rest of the world. Worst of all, the People's Liberation Army (PLA) continues its naval and air force investment and buildups. This makes the regional countries very nervous. The ongoing arms race mingled with growing nationalism just adds more fuel to a smoldering fire. The tension is getting higher than ever before, even more than the Taiwan Strait Crisis in 1996. The risk of major conflict does not seem far away from many Asian people's imaginations. Lessons learned from the past teach us that any misunderstanding and miscalculation among disputed entities may lead to a war or a catastrophe. We should not wait to resolve problems after they happen, sacrificing thousands of lives and wasting millions of dollars before we actively prevent these disputes from becoming real conflicts.

The concept of conflict prevention seems a better approach to cope with these urgent and sensitive issues which need to be resolved before any conflict flares in the South China Sea. According to other successful experiences, conflict prevention measures indeed played a vital role in reducing regional tensions, especially those between the U.S. and the Soviet Union, in the communication hotlines and declaratory nuclear pledges. Research on conflict prevention proliferated in the 1990s due to the

end of the Cold War. The world is no longer in an ideological or bi-polar context but a multi-polar order, and new ideas evolve in conflict prevention, humanitarian relief and economic reconstruction issues.³ After 9/11, the wider conception of conflict prevention seemed to reach a high peak by shifting the global attention towards the prevention of terrorism.⁴ Conflict prevention not only saves human lives and prevents human suffering, but also creates confidence and trust between opponents and saves enormous resources that may be wasted through military activities.⁵

On the other hand, it does not mean that any issue can be easily resolved by all conflict prevention or confidence building measures. Different regions with diverse issues will suit different or modified patterns. In the South China Sea, the calculus is quite different because China is becoming a regional power and all the suggested conflict prevention or confidence building measures in solving this issue are not effective or even working yet. That is the reason why the related claimants have to delve into studies in preventive and confidence-building measures from the past and establish all the root causes of conflicts from facts. Furthermore, we have to exploit innovative ideas or new opportunities in regional, international, bilateral or multinational mechanisms to shape a better and peaceful context in the South China Sea. This paper examines the existing obstacles among all claimants and provides feasible recommendations to facilitate conflict prevention and confidence building measures. Hopefully, the suggested and modified process will enhance the stability in the region and attain the peace of the world at best.

The South China Sea (SCS) Disputes

The South China Sea disputes involve a set of overlapping and competing territorial sovereignty claims over islands, reefs and atolls along with their surrounding waters in Pratas Reef, Macclesfield Bank, the Paracels, the Spratlys, and Scarborough Shoal, lying between China and Southeast Asia. Prior to World War II, China and two colonial powers, Japan and France, all claimed to own parts of that area. After the war, France withdrew from this area and Japan renounced its claim according to the San Francisco Peace Treaty without specifying any territorial rights to other countries.⁶ The current claimants include China, Taiwan, Vietnam, the Philippines, Malaysia and Brunei. China and Taiwan have the same claim according to the Qing dynasty chronicles in the 19th century and a nine-dashed line map published by the Republic of China (Taiwan) in 1947. So far, they neither compete nor cooperate with each other on this issue. Among other SCS claimants, Vietnam's claim overlaps with China's more than any other country. China and Vietnam have already fought twice over disputed islands in 1974 and 1988. This resulted in PLA's occupation of the Paracel Islands and led many Vietnamese to believe that China would not hesitate to use force again to settle sovereignty disputes.⁷

Causes of Disputes

Compared to other SCS claimants, territorial sovereignty is Beijing's core interest which cannot be ceded to others by its regime. China's 2010 Defense White Paper portrays PRC's national defense objectives and missions, and safeguarding national sovereignty always gets the first priority over other issues.⁸ The reason that China has to take a firm position on sovereignty issues is to keep the unity of regime. It is afraid any weakness will affect Tibet, Uyghur, Taiwan or other disputed areas and cause them

to seek their independence. China asserts “indisputable sovereignty over the South China Sea islands and their adjacent waters.”⁹ In the past, China fought with India, the Soviet Union and Vietnam for the same reasons. There is still a possibility that China may in the future wage a regional war against any other claimant in the South China Sea.

In addition to its territorial sovereignty concerns, the PRC also searches for opportunities on the world stage. “Europe is a landscape; East Asia a seascape.”, as Robert Kaplan presented in one of his articles.¹⁰ The 20th century is the century of Europe and the 21st century will be the century of Asia. In recent decades, the world’s strongest economic driving forces mostly come from Asia and this special seascape requires all the regional countries to consider their sea power capabilities in protecting primary national interests. Nevertheless, the tendency to clash in this maritime area is getting higher. For China’s best interest, it must have a long-term strategy to face the destiny of geography, to keep the South China Sea as its “inner sea”, and to further secure its foreign resources. For the rest of claimants, they do not want these strategic waters totally controlled by China, or they will lose their political and military flexibility. This reason is the major driving force making the People’s Liberation Army Navy (PLAN) eagerly build its blue-water navy and makes other claimants anxiously enhance their naval and air force capabilities.

The naval buildup up also influences the natural resources of the disputed area. Besides fish stocks, the South China Sea contains natural gas and crude oil reserves which are coveted by all related actors. China estimates the oil reserves range from 100 billion to 200 billion barrels, whereas the USA and Russia estimate a more realistic 1.6

billion to 1.8 billion barrels.¹¹ This area is considered by many Chinese observers to be the Second Persian Gulf.¹² In order to sustain its economy, China imports a large portion of its crude oil from the Middle East, thus China's determination to control the area. The spiraling global energy consumption is expected to be double by 2030 and China accounts for half of that growth.¹³ The Chinese government perceives economic growth and free access to energy as essential to its regime's survival. Further, from a security perspective, the shortage of energy may also trigger arms races, diffusions of weapons of mass destruction and regional instabilities as other countries seek to establish their own sovereignty. Facing such an energy security dilemma, the South China Sea has become a relevant and important choice to China's calculus.

China also seeks to right the wrongs of previous centuries. When imperialism came to the Southeast Asia in the 16th century, as led by Spain, France, British and Japan, it ravaged much of the region up to modern times. For China, who once had a "Middle Kingdom" in Asia, imperialistic powers forces it to give up many territories and sign several unfair treaties. These countries forced China to pay large sum of indemnities and to allow foreign treaty ports during the Qing Dynasty. People can discover the same analogy in Thucydides' book that the honor among the Athenians is always the driving force that keeps them fighting with the Spartans by any means. That same sense of honor is the centerpiece that drives most Southeast Asian countries and China to safeguard their national interests and fight against illegitimate intrusion or occupation.

Another potential driver of conflict is the growing nationalism which directly relates to the history of the territorial disputes in Asia. As Edward Mortimer and Robert

Fine described the nationalism in Asia, “With colonies and communism mostly gone, nationalism—securing the nation in a strong state—is a driving force in the foreign policy of many Asian states.”¹⁴ Indeed, they clearly point out that the growing nationalism is also driving potential conflict on the SCS disputes. For instance, Vietnam has resisted China throughout its history and does not have any interest to be “Finlandized” by this neighbor.¹⁵ Historical conflicts and territorial disputes make Vietnamese politicians and people strongly pressure the Hanoi government to take a harder stance against China on the SCS issue. This domestic rising pressure is getting higher in other Asian countries as well and may push politicians to please their people and accidentally trigger an unintentional war.

Current Situation

After joining the World Trade Organization in 2001, China has grown tremendously in the past decade. The sustained economic developments, coupled with higher education and better technology, not only facilitate its military modernization, but also build the nation towards a stronger regional power. The PLAN deployed its first aircraft carrier, Liaoning, to the East Sea Fleet in September 2012. Although the carrier is not fully operational and its mother harbor is far away from the South China Sea, it still poses a serious threat to other claimants in the area. Chinese officials also believe that the PRC will have a window of opportunity for the next decade and this opportunity definitely will help it gain more advantages from resource competitions or territorial disputes.

In 2010, President Obama announced that the U.S. intended to rebalance from the Middle East and Southwest Asia to Southeast Asia because he believed the 21st Century will be the Pacific Century. The current U.S. South China Sea policy

emphasizes “the achievement of a Code of Conduct which can be made through dialogue and multilateral diplomacy, freedom of navigation, open access to Asia’s maritime domain, the maintenance of peace and stability, respect for international law and opposing the threat or use of force by any claimant to advance its claims or interfere with legitimate economic activity.”¹⁶ On the same issue, China does not want external influence to intervene in its national interests, no matter if it came from the U.S., Russia, Japan or India.

In May 2009, in response to Vietnam and Malaysia’s joint submission of their SCS territorial claims to the United Nation Commission on the Limits of the Continental Shelf (UNCLCS), China also submitted its nine-dashed line map to the CLCS.¹⁷ This action renewed the fear among other claimants that China intended to claim not only the islands but also all of the waters inside the nine-dashed line.¹⁸ As for the Philippines, the April 2012 standoff of Scarborough Shoal damaged the relations between China and the Philippines as this incident lasted for almost two months. More recently, by the end of 2012, China’s unilaterally changed their newly revised passports with a map that included all of the South China Sea and also claimed the right to patrol the disputed waters. All of these provocative measures just make the disputes more complex. For this reason, the regional ASEAN plays an important role to resolve any sovereign issue and encourage the PRC to restrain itself and receive peaceful approaches.

To help ASEAN or other organizations develop resolutions to these sovereignty issues, leaders can turn to proven conflict prevention and confidence building measures. People generally accept that “a penny of prevention is worth of a pound of resolution.”¹⁹ The conflict prevention not only focuses on economic perspective but also emphasizes

serious concerns in political and humanitarian scope. After Kofi Annan assumed the position of United Nation (UN) Secretary-General in 1997, he advocated moving the UN from a culture of reaction to a culture of prevention.²⁰ The aim was to defuse any armed conflict before it could cause any significant loss in lives or finance. Although the current fact shows that the UN may not be the best option in regional affairs, it is still better for all claimants to try preventive measures on the SCS disputes and avoid unnecessary conflicts. Last and the most important of all, conflict prevention and confidence building measures can create “Win-Win” and not “Lose-Lose” situations. Through constructive dialogue and confidence building, all the claimants can have the opportunity to create a peaceful joint development, but not foolish competitions or conflicts.

Concept of Conflict Prevention

Definition and Categories

Scholars generally define conflicts as situations in which two or more parties strive to acquire the same scarce resources at the same time.²¹ In the current environment, parties compete not only for resources, but also some other subjective and intangible interests. A conflict is divided into five levels of intensity- stable peace, unstable peace, open conflict, crisis and war. The duration of conflict is divided into three phases- pre-conflict, conflict and post-conflict.²² As for conflict prevention, it is a series of political options ranging from coercive and non-coercive measures related to diplomatic, economic, political and military instruments used to prevent disputes from forming in the first place, or preventing them from developing into an active conflict.²³ The study of conflict prevention has a relatively short academic history, even though the philosophy has existed, though not defined, for a long time in the East and the West.²⁴ The Congress of Vienna in 1815 can be considered as the origin of a conflict prevention

mechanism in contemporary history. In 1950s, the UN Secretary-General Dag Hammarskjöld first introduced the idea of “preventive diplomacy” which referred to “actions taken to keep conflicts localized, preventing violent spillover from superpower conflicts onto international arena.”²⁵ After that, the definition has been broadened to “action to prevent disputes from arising between parties, to prevent existing disputes from escalating into conflicts, and to limit the spread of the latter when they occur.”²⁶ The UN, European Union, African Union, Organization for Security and Cooperation in Europe (OSCE), ASEAN, G8, International Monetary Fund and the World Bank are organizations committed to conflict prevention.²⁷

Generally, conflict prevention can be categorized into direct (light or operational) prevention and structural (deep) prevention. Direct prevention refers to short-term measures applied to prevent an existing conflict from becoming a violent action – for examples, confidence building measures and crisis management.²⁸ The other is structural prevention, which aims to address the root causes of conflict, such as political position, energy insecurity and historical animosity. It is a long-term process to facilitate governance, civil society building, and economic, political, and social stability. It also ensures that crises do not arise in the first place and do not recur.²⁹ For a short-term preventive perspective, this paper will focus on direct prevention, and also discuss possible root causes to seek long-term prevention for the SCS disputes. In reality, these two prevention measures do run in parallel and support each other quite often.

Scope and Measures

In 1992, the UN Secretary-General Boutros Boutros-Ghali listed five specific forms of preventive measures: confidence building, fact-finding missions, early warning networks, preventive deployment, and demilitarized zones.³⁰ There are also other terms

introduced in this field, such as preventive engagement, escalation prevention, relapse prevention, preventive deployment, early warning, targeted sanctions, and direct prevention.³¹ Even though there are many direct and structural conflict prevention measures (CPMs), they are still confusing people because the definition is so broad, especially in a political, military, economic or social perspective. If conflict prevention is further defined using a scope divided by security and peace,³² there will be a clearer definition of conflict prevention. Under the security scope, some direct measures are confidence building, preventive diplomacy and conflict resolution, and the structural measures are to establish a security community through functional cooperation. Under the peace scope, some direct measures are early warning system and early response system, and the structural measures are to improve economic and social development by good governance and external assistance. On the SCS disputes, most claimants have drafted initial preventive measures that mostly fall into the security scope, not the peace scope.

In 1995, China agreed for the first time to discuss the SCS disputes multilaterally with other claimants. Since then, ASEAN drafted a regional code of conduct to prevent any further conflict from happening, and a regional Declaration of Conduct (DOC) on the South China Sea was finally agreed upon between China and ASEAN in 2002. Although the DOC is not legally binding and is short of comprehensive CPMs, it is still a good start in confidence building measures and cooperative activities among all claimants. This DOC builds a mutual dialogue and binds all claimants to common principles in the UN Charter, the UN Convention on the Law of the Sea (UNCLOS), the Southeast Asian Treaty of Amity and Cooperation, and the PRC's Five Principles of Peaceful

Coexistence.³³ The confidence building measures included in the DOC are “holding dialogues and exchange of views as appropriate between their defense and military officials, ensuring just and humane treatment of all persons who are either in danger or in distress (not quite falling into the military perspective), notifying, on a voluntary basis, other parties concerned of any impending joint or combined military exercise, and exchanging, on a voluntary basis, relevant information.”³⁴ As a final note, these confidence building measures are only preventive measures in the security scope, and there is an urgency to develop a comprehensive code of conduct in CPMs, even against China’s opposition.

Methodology and Considerations of Effectiveness

In Alice Ackermann’s article,³⁵ she provides a good methodology to design feasible CPMs. People have to identify four major issues before they can successfully enhance conflict prevention practices. These issues are scope, cause analysis, effectiveness and institutionalization. They are good tools to examine current SCS disputes and further suggest suitable preventive measures for all the parties.

In the previous discussion, there are four categories dividing CPMs by time frame (short or long term) and security scope (security or peace measure). In examining the scope of the SCS disputes, the best approach is to focus more on short-term (direct) than long-term (structural) prevention, and more on security than peace measures. So far, even though there was finally a potential breakthrough when China and ASEAN both agreed on implementation of the DOC guidelines in 2011,³⁶ there is no further effective CPMs except a set of voluntary confidence building measures. We have to exploit more building blocks to facilitate the initial CPMs. Most important of all, it is

always better to prevent a conflict from becoming a crisis, than to work on post-conflict issues. The scope should be limited only to the early and non-escalatory stages at best.

What are the causes of these disputes in the South China Sea? In early discussion, these causes are sovereignty, territorial integrity, geopolitics, maritime resources, historical animosity and nationalism. Are they direct or root causes? Actually, in Thucydides' book, it gives us a better answer already. Fear and honor are two root causes driving people into conflict without caring about lives or economic losses. All causes mentioned above are related to either fear or honor. For China, it has to hold its strong position on territorial sovereignty issues because it fears separatism will prevail and lead to the independence of Tibet, Uyghur or Taiwan, and further threaten its regime. Besides, it also fears that an energy source controlled by others will disrupt its economic growth and the external containment will restrict its national interests. Most importantly, due to its past 150 years of history, China wants to restore its previous glory and honor and become the center of the world again. For the ASEAN countries or other claimants, fear is the vital driving force in their minds. If they recede from their claims, it means the whole South China Sea will be in China's control. They do not wish any kind of colonization by China to affect their lives.

According to the above direct causes and root causes, this region has formed a consensus among most countries. The previous colonized experience still rankles even after gaining their independences. They do not like external interferences and prefer an "ASEAN Way" or "Asian Way"³⁷ in dealing with disputes. Many tools of conflict prevention are not wholly transferable from other regions and the Southeast Asian region does not intend to do so either. Furthermore, nations look for a peaceful joint

development in the South China Sea and this cooperative action surely will not hurt their national identities. To shelve sovereign disputes and to cooperate in joint development are still two of the possibilities in the toolbox, and they have to address individual economic interest. Lastly, people tend to do business with reliance on long-term relationships and informalities in Asia. Elite interaction and informal mechanisms can be a catalyst to build trust, keep flexibility, gain political will and facilitate preventive measures on the SCS disputes.

In Cockell's literature,³⁸ he suggests three elements to formulate preventive strategy and also emphasizes the importance to assess effectiveness of related actions. The first element is to identify explicit operational objectives which include a context-specific conflict analysis or cause analysis. For the SCS, the cause analysis has been done in the previous section. The second part is to analyze short- and long-term options or measures. The DOC so far is only a short-term measure and there is necessarily a basic need for middle- and long-term options. The draft and implementation of a Code of Conduct (COC) are long term options. Ultimately, there should be legal measures binding in international laws, such as UNCLOS, or treaties among claimants to reach long-term objectives. Cockell's last element of preventive strategy is to integrate all possible options, either in security and peace scope, or in military, political, economic or social perspective, and evaluate all outcomes and impacts of subsequent actions. So far, the agreed DOC or the draft COC focus on security and humanitarian measures only. There is a necessity to have more integration of economical, social, educational and technological measures to develop a broader network of conflict prevention throughout the South China Sea region.

At last, effective prevention requires the enhanced institutionalization of preventive policies and strategies over time, and the CPMs have to become routine mechanisms in a different aspect.³⁹ It is necessary to consider not only the international, regional, national, governmental or non-governmental level, but also the unilateral, bilateral and multilateral context. However, the application of multilateral mechanism is still difficult to conflict prevention issues. One feasible approach is to keep issues regionalized and have as few actors as possible.⁴⁰ China opposes the SCS disputes to go internationally and so does ASEAN, even under the current staggering progress. On the other hand, it also does not mean that all the claimants would just count on preventive actions to resolve all issues. For example, the Philippines requested Japan's support to enhance its naval capability and also took its territorial disputes with China to international tribunal in 2013. There is an ongoing tendency from impatient claimants to seek external assistance to leverage against China's direct pressure. Unfortunately, these unilateral actions will not help any claimant solve any issue and there is still a need to facilitate preventive policies becoming operationalized across all actors. As a result, the implementation of the regional institutionalized norms, or COCs, is the vital key for future peace development.

Levels of Mechanisms and Effectiveness

To increase the breadth and depth of the South China Sea issue, the discussions have to go further and consider possible levels and mechanisms of conflict prevention in the area. Basically, there are three levels of conflict prevention which can be categorized as national, regional and international. There are also formal and informal communications existing at all three levels. At the national level, governmental agencies (formal), think tanks (informal) and other private sectors play important roles to

formulate the preventive policy and strategy for a certain country to protect its national interests. At the same level, countries can employ unilateral, bilateral and/or multilateral mechanism(s) to study and practice conflict prevention. For example, a country can unilaterally stop deploying offensive weapons to demonstrate its will not to intimidate others. On the other hand, a country can also work bilaterally or multilaterally with others for certain measures to avoid miscalculations or misunderstandings. These preventive concepts are needed to confer and practice with other countries or institutions. Then it comes to the regional level for different countries (or parties) to study common disputes, to reach consensus, and to resolve any conflict by only employing bilateral and/or multilateral mechanism(s).

The ASEAN, ASEAN Regional Forum (ASEAN-ARF), ASEAN Maritime Forum (ASEAN-AMF), Asia-Pacific Economic Cooperation (APEC), East Asia Summit (EAS), Trans-Pacific Partnership (TPP)⁴¹ and Regional Comprehensive Economic Partnership (RCEP)⁴² are important formal regional organizations to implement preventive actions in the Southeast Asian region. For regional elite dialogues, the EAS⁴³, APEC and ASEAN will be suitable platforms to provide communicative and constructive opportunity on the SCS disputes. The ASEAN-ARF and ASEAN-AMF⁴⁴ are two official research and study centers to foster constructive dialogue and consultation on political and security issues of common interest and concern. They make significant contributions to efforts towards confidence-building and preventive diplomacy in the Asian-Pacific region.⁴⁵ All chartered governmental officials can exchange their ideas within these two organizations. As for the TPP and RCEP, they can be considered to be bigger-scope and higher-potential mechanisms to resolve disputes among all claimants. Though they

involve more external influence and discord with the regional norm, they also provide a more indirect and softer approach to prevent further conflict. The Council for Security Cooperation in the Asia Pacific (CSCAP) and the ASEAN Institutes of Strategic and International Studies (ASEAN-ISIS) which formulate potential preventive policies and strategies are two important informal preventive organizations.

At the international level, there is only a multilateral international organization working and there are still informal international organizations such as non-governmental organizations. The UN, IMF, WTO, and World Bank all fall into this level. Unfortunately, the ineffectiveness of the UN will not contribute more preventive effort for the SCS disputes, and one of the reasons is the mal-functional design of the UN Security Council. China is a permanent member of the UN Security Council and it has the power to veto any proposal not complying with its national interests, especially those involving the SCS disputes.

Recommendations

There are some recommendations which come from the above discussion that could possibly provide alternatives to facilitate conflict prevention on the SCS disputes. First of all, effective conflict prevention is based on a clear and strong political will among all claimants. This political will is the main driving force to establish a foundation and build dialogue and mutual trust. How can this will be initiated? It is obvious that neither side will surrender its sovereignty or impede its economic development because of the SCS issue. To shelve disputes and seek a joint development is the better option which should be accepted by all parties. Since the UN may not be effective on this issue, ASEAN has to continuously take the lead role to forge a consensus with China. From China's perspective, it also agrees with the regionalization of this issue and does not

want the disputes to go international. The ASEAN has to employ softer and more creative approaches to pursue China's cooperation, such as building an energy-related Asian Oil and Gas Union⁴⁶ or shaping clearer norms supported by the U.S. within the UNCLOS framework (China has declared that the U.S. may not assert rights, such as freedom of navigation, if it is not a party in the UNCLOS). The most important part of the short-term perspective is that there should be some progress in implementing initial CPMs, such as confidence building measures. People have to think about putting out a fire first and then removing all flammable issues. Confidence building measures will be a good start to dealing with the SCS disputes.

Concept of Confidence Building Measure (CBM)

Definition and Scope

The formal idea of “confidence building measures (CBMs)” was first proposed at the Helsinki preparatory consultations in 1973, to establish an agenda for the Conference on Security and Cooperation in Europe (CSCE).⁴⁷ In 1983, the CSCE states met in Madrid as a follow-up to the Helsinki Process and the other term “security building measure” was brought into a proposal for Yugoslavia. Finally, a new term “confidence and security building measures” appeared in an agreement to describe the new measures in the Madrid Process.⁴⁸ People also mentioned different terminology such as “trust building measures” or “measures for reassurance”. An idea presented in 1995 ARF Inter-Sessional Meeting suggested that choice of terminology was not important, and the CBM has a different meaning in the Asia Pacific than it does in Europe. This paper will use the term “confidence building measures (CBMs)” overall to emphasize the Asian-Pacific perspective.

At the beginning of Helsinki Process, the Western bloc states considered CBMs as more political than military terms. As they have evolved in Western states, “confidence building measures have referred more narrowly to initiatives addressing military planning and operational activities”⁴⁹. However, the Asia-Pacific argues for a broader conception also in political, economic and social dimensions.⁵⁰ Confidence building is frequently seen as a process of communication between parties concerning security-related matters, to improve trust and eliminate uncertainty in reaching a final goal of arms control and disarmament.⁵¹ “CSBMs/CBMs are measures that tend to make military intentions more explicit by increasing transparency and predictability, thus reducing the risk of war by accident or miscalculation.”⁵² In the above definitions, CBMs only involve the security dimension of military activities, and they are not the combination of political, economic and social dimensions. According to the above definition, it is easier to zoom in on security issues at beginning, even though the Asia-Pacific has a different opinion towards CBMs.

Categories and Considerations

In Pederson’s and Weeks’ joint work, CBMs fall generally into three broad categories: declaratory, transparency and constraint measures.⁵³ Declaratory measures are statements of intent including broad commitments such as no first use or no-attack agreements. The Indo-Pakistani Simla Accord in 1972 suggests that declaratory measures may be useful to resolve long-standing issues such as border disputes, and they are most beneficial when committing nations to more formal agreements or implementation measures.⁵⁴ The 1993 Sino-Indian confidence building agreement has enjoyed a quite success and suggests the potential of CBMs. The current DOC guidelines on SCS issue are also considered as well as declaratory measures including

broad commitments such as non-attack (peaceful) agreements.⁵⁵ These measures will be effective only if ASEAN can convince China to implement the final COC.

The next category of CBMs is transparency. These encompass information exchange, communication, notification, and observation /inspection measures. On the Sino-Indian border disputes, the CBMs were very successful in exchanging defense education and strategic study personnel, building hotlines as well as setting flag meetings. For the SCS concerns, the current annual Defense Ministers' Consultation, military personnel /student exchanges and defense White Paper published between ASEAN and China are all good initiatives of information measures. The further hotline-building in either China-Vietnam or Philippine-China communicative channel can also be valuable to enhance mutual understanding and avoid miscalculation, especially in this time-sensitive maritime domain.

The last category includes risk reduction, exclusion/separation zones, as well as constraints on personnel, equipment and activities. Constraint CBMs which have more military impact than transparency measures and arms control can be difficult to negotiate and verify among parties. The code of conduct (COC) on SCS disputes is one of the constraint measures.⁵⁶ It is expected to face many challenges in implementing the COC because the ASEAN leadership in the next four years is relatively weak and under China's influence. Further, even though the COCs generally refer to the implementation of military activities, the concept could be adapted to address risks at the intersection of military and economic interests. For example, they could define rules of conduct preventing military interference with commercial fishing, oil rig resupply and so on, and prescribe common security approaches and military roles with regard to non-state

actors engaged in piracy or illegal smuggling. The COC focusing on maritime anti-piracy or anti-illicit-trafficking can be acceptable building blocks for China and other claimants to work along on the disputes.

Mechanisms and Effectiveness on the South China Sea Disputes

“Confidence and security building measures can be pursued at various levels, bilateral, sub-regional, regional, and multilateral – even unilateral measures are conceivable – and can be applied flexibly to conform to the political and security characteristics and requirements of specific situations.”⁵⁷ From Kofi Annan’s perspective, CBMs have a broader interpretation in political dimension and basically have three types of approachable mechanisms. On the SCS disputes, there are various official initiatives undertaken to address the potential conflict since 1990s, including unilateral proposals by the claimants, bilateral agreements among them, and multilateral consultations and actions even with external parties.⁵⁸

If looking at unilateral measures, ironically, China was the first government to propose a strategy for resolution in the late 1980s and came up the idea of shelving the sovereign disputes and pursuing joint development of the South China Sea.⁵⁹ Unfortunately, since then there is no further development on this issue. Behind China’s design, it has been a consistent policy since the 1970s to assure joint management of maritime resources with other claimants and simultaneously delay discussions in implementation of constructive measures, so it can buy more time to consolidate its sovereign and territorial claims. Is there any other unilateral action taken on this issue? In 1995, the Philippines unilaterally proposed its ideas of demilitarization and freezing status quo of the waters, but the absence of political will and a feasible mechanism did not contribute to any agreement.⁶⁰ Such unilateral declarations which have no

mandatory and obligatory measures to any claimant cannot effectively facilitate constructive CBMs for future progress.

There are also examples of bilateral consultations including the China-Vietnam delimitation of the Tonkin Gulf in 2000, and the Philippines-China and Philippines-Vietnam Codes of Conduct (COCs) of 1995 and 1996 respectively. The bilateral COC calls for peaceful settlement in accordance with international law and urges both parties to undertake CBMs on use of force and to increase dialogues among claimants. However, these bilateral mechanisms may not prevent a third party from taking any provocative action against others on any multilateral dispute. Among all claimants, only China and Vietnam have established a bilateral joint working group to address the disputes in 1994. Even though it has successfully resolved the issues related to land border and the Gulf of Tonkin, neither side has the desire to further compromise its own sovereign claim on the Paracels. Other than Vietnam, China has not established any formal bilateral mechanism to discuss the SCS issue with the Philippines, Taiwan, Malaysia, or Brunei.⁶¹ In 2011, ASEAN agreed to give up a formal statement that its member would consult before meeting with China, and China was pleased with the outcomes.⁶² This makes clearly the whole CBMs will move towards to a “step-by-step” and “no multilateral without China” manner. The small claimants are sufficiently aware of their unequal weakness, compared to China. However, it is still worth endeavoring to build a bilateral mechanism (mutual understanding) with China and facilitate short-term CBMs for regional stability and prosperity.

The South China Sea should be a free-accessed global common, but China has a different interpretation towards it. In 1998, the U.S. and China established a Military

Maritime Consultative Agreement (MMCA) to provide CBMs to discuss differences in maritime laws and share standard military operation procedures of each force.⁶³

However, there is no further progress in maritime cooperation after this consultative agreement. In recent years, China has had intense confrontations with the U.S. over its military activities in the Chinese-claimed maritime EEZ, such as the incidents of EP-3 clash and USNS Impeccable harassment. From the U.S.'s viewpoint, conducting military intelligence gathering operations in a coastal state's EEZ is considered routine and consistent with international law.⁶⁴ As for the PRC, it considers these intelligence probing activities somehow unfriendly and claims the South China Sea its territorial waters. This is the reason why the U.S.'s policy has to reiterate its insistence on the freedom of navigation in the South China Sea. The PRC prefers bilateralism to compete with all opponents and gain best advantages from all disputes. Further, it always fears that the multilateral mechanism will bring international intervention such as the U.S. into its calculus.

Multilateral measures are the last concerns required to take a necessary review. Undoubtedly, the most ideal and effective multilateral mechanism to regulate each SCS claimant's behavior is by international law or the UNCLOS, but this legal frame only falls into long-term (structural) preventive actions, not into short-term preventive measures such as CBMs. In a realistic sense, among all multilateral mechanisms, ASEAN is the primary platform to formulate CBMs on the regional SCS issue. The 1992 Declaration on the SCS and the 2002 Declaration on the Conduct of Parties set up basic principles to reduce disputes but unfortunately neither provides any workable mechanism to implement them.⁶⁵ The ASEAN member states which do not have sufficient powers to

negotiate with China separately or jointly also hardly urge China to cooperate with their will. For example, there is proof showing that China successfully imposed its influence on other ASEAN states during the Scarborough Shoal standoff. In an ASEAN emergency meeting May 2012, as the chair holder, Cambodia blocked the consentaneous attempt to release a statement encouraging China and the Philippines to exercise restraint, and failed ASEAN's mission to produce a customary communiqué for the first time in a 45-year history.⁶⁶ This is the reason why the angriest claimants, the Philippines and Vietnam, long to pull external powers, such as the U.S., Russia, India, Japan, and Australia, to contain China's ambition.

No matter how difficult it is, ASEAN and other claimants still have to apply all possible means to facilitate regional stability and maritime security, especially in this economically and diplomatically interdependent context. For example, ASEAN can develop new multilateral approaches with China (and Taiwan) in this region, such as building a peace-keeping or NATO-like force to patrol disputed and illicit trafficking waters or increasing military-to-military exchanges to elevate mutual transparency. Further, economy is the center of gravity of the Asia-Pacific region. No country can afford to sacrifice its stability and degrade its economic growth, especially China. Regional organizations such as the APEC, EAS, TPP and RCEP can employ all available soft or smart powers to reach the common goal in stability and shape better consultations on CBMs.

Recommendations

A Chinese perspective presented by Liu Huaqiu, a senior-most arms control expert in China, suggested that Asian states can learn CBM experience from the Europe, if the concept is modified to fit the "unique cultural, historic, political, and

economic conditions of their region.”⁶⁷ Foreseeably, building CBMs will be a long process in the Asia Pacific. The realistic mentality towards CBMs should be addressed more carefully. The CBMs will be a process, stepping stones or building blocks, but not only measures or institutions. China is very patient in dealing with this issue and so should other claimants. No matter if it is a bilateral or multilateral understanding among actors, any mutual understanding will eventually facilitate a CBM process. Further, there is no guarantee for any effectiveness, and the key of this process is to maintain mutual dialogue and communication first, and then build confidence and trust afterwards. Only after gaining a mutual trust, will transparency then help to reduce any tension in military or politics. Measures such as hotlines building and military-to-military exchange are viable to increase mutual communication and transparency. Furthermore, building a regional peace-keeping or NATO-like patrol force within ASEAN (or APT including China, Japan and South Korea) will also facilitate security and stability in the South China Sea. It is always important to employ all possible governmental and non-governmental tools, especially in economic, political, social, or technological field, to shape a better CBM context. The most important of all, the ARF endorsed three-staged CPMs such as “confidence building, preventive diplomacy and conflict resolution.”⁶⁸ How to urge all claimants to implement the initial “confidence building phase” as soon as possible will be vital to the subsequent preventive measures. So far, the agreed three-staged CPMs are keys to regional (and global) security and economic growth and should be encouraged by more external actors. Hopefully, the successful experience in the Asia Pacific can be others’ preventive lesson in the future.

Conclusion

Above all, there are some lessons and recommendations that need to be reemphasized specifically for the SCS disputes. First of all, the concept of conflict prevention and confidence building measures in the Asia Pacific cannot just be implanted from other's pattern directly, no matter if they were from Europe, the U.S.-Soviet Union Cold War model or South Asia. All claimants (including Taiwan) have to explore or exploit their own "Asian Ways" including possible soft (such as economic, social or cultural), smart (such as educational or technological), informal (such as informal dialogue) and non-governmental (such as NGOs) measures to reach agreements and consultations on CPMs or CBMs, to enhance regional security, stability and economic growth. The APEC, EAS, TPP, RCEP, ASEAN-ARF, ASEAN-AMF, ASEAN-ISIS and CSCAP are all possible tools inside or outside the current box to facilitate shaping necessary CBMs.

Secondly, except screening all root causes such as fear and honor among themselves, SCS claimants have to consider the political wills to foster regional prosperity by CBMs or CPMs and set up a "win-win" strategy, not a "lose-lose" scenario. Further, according to the regional culture and complexity of disputes, informal and elite communication can be one of the options to help build confidence and trust. Either side of the SCS claims has to be patient in dealing with the long-term process, and must not consider CBMs or CPMs just measures or institutions only. Furthermore, even though it is a regional issue, all claimants and external actors have to carefully deal with it, especially the Asia Pacific is deeply intertwined with the East China Sea, Taiwan Strait, and North Korean Peninsula issues. On the other hand, if these CBMs and CPMs can be successful, they may be useful as a paradigm for other Asian-Pacific issues.

Beyond all ideal considerations and suggestions, notions still have to be less optimistic and more realistic about China's willingness to cooperate. Although China and other claimants have both agreed on implementation of the DOC guidelines, there is no guarantee that the future COCs will be established and implemented successfully, especially with China's purposeful behavior to prolong every process. The South China Sea may still be a high-risk flashpoint if the regional countries and global actors underestimate the ongoing situation. The competition of resources will be more ferocious especially after India's participation in the joint SCS development with Vietnam. The growing domestic nationalism and arms races will make the regional tension more severe than ever. Facing to the above demanding challenges, as a leading agency, ASEAN initially has to integrate regional efforts in stronger economic and defense powers and urge China to accept further CBMs and CPMs. If China does not provide any constructive progress, then it will be better to seek external deterrence at least to maintain regional stability. The feasible option of sufficient U.S. military power presence in the Asia-Pacific is an ultimate guarantee to other claimants and a deterrent to hedge the Chinese military elites.⁶⁹

Endnotes

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